



Department of Defense DIRECTIVE

NUMBER 2140.2

January 13, 1993

Certified Current as of November 21, 2003

C, DoD

SUBJECT: Recoupment of Nonrecurring Costs (NCs) on Sales of U.S. Items

References: (a) DoD Directive 2140.2, "Recoupment of Nonrecurring Costs (NC) on Sales or Licensing of U.S. Items," June 26, 1992 (hereby canceled)
(b) Public Law 90-629, "Arms Export Control Act," October 22, 1968, as amended
(c) Section 9701 of title 31, United States Code
(d) Defense FAR Supplement (DFARS), current edition
(e) DoD 7290.3-M, "Foreign Military Sales Financial Management Manual," September 1986
(f) DoD 7220.9-M, DoD Accounting Manual," October, 1983

1. REISSUANCE AND PURPOSE

This Directive:

- 1.1. Reissues reference (a).
- 1.2. Updates policy, responsibilities, and procedures to conform with references (b) and (c) for calculating and assessing NC recoupment charges on sales of items developed for or by the Department of Defense to non-U.S. Government customers.

2. APPLICABILITY AND SCOPE

- 2.1. This Directive:

2.1.1. Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

2.1.2. Does not apply to sales of excess property when accountability has been transferred to property disposal activities and the property is sold in open competition to the highest bidder.

2.2. The policies and procedures in this Directive apply to all sales on or after the effective date of this Directive, and supersedes application thresholds and charges previously established. Previous versions continue to govern sales made during applicable effective dates. Such previously established nonrecurring cost recoupment thresholds and charges shall be eliminated or revised in accordance with this Directive.

3. DEFINITIONS

Terms used in this Directive are defined in enclosure 1.

4. POLICY

It is DoD policy that:

4.1. ANC recoupment charge shall be imposed for sales of major defense equipment only as required by Act of Congress (e.g., section 21(e)(1)(B) of the Arms Export Control Act (reference (b))).

4.2. The Under Secretary of Defense for Policy may grant a waiver to recoupment charges in accordance with enclosure 2.

4.3. NC charges shall be based on the amount of the DoD nonrecurring investment in an item.

5. RESPONSIBILITIES

5.1. The Comptroller of the Department of Defense shall provide necessary financial management guidance.

5.2. The Under Secretary of Defense Acquisition shall take appropriate action to revise the DFARS (reference (d)) in accordance with this Directive.

5.3. The Under Secretary of Defense for Policy shall:

5.3.1. Monitor the application of this Directive.

5.3.2. Review and approve NC recoupment charges and NC recoupment charge waiver requests received from foreign countries and international organizations for foreign military sales.

5.3.3. Ensure publication of a listing of items developed for or by the Department of Defense to which NC recoupment charges are applicable.

5.4. The Secretaries of the Military Departments and the Directors of the Defense Agencies shall:

5.4.1. Determine the DoD nonrecurring investment in items developed for or by the Department of Defense and perform required prorate calculations in accordance with this Directive and financial management guidance from the Comptroller (C, DoD).

5.4.2. Validate and provide recommended charges to the Under Secretary of Defense for Policy (USD(P)). Supporting documentation will be retained until the item has been eliminated from the NC recoupment charge listing.

5.4.3. Review approved NC recoupment charges on a biennial basis to determine if there has been a change in factors or assumptions used to compute a NC recoupment charge and, if there is a significant change in a NC recoupment charge, provide a recommended change to the USD(P).

5.4.4. Collect charges on foreign military sales, in accordance with DoD 7290.3-M (reference (e)), and on other sales made before this Directive, in accordance with DoD 7220.9-M (reference (f)).

5.4.5. Deposit collections to accounts as prescribed by the C, DoD.

5.4.6. Request guidance from the USD(P), within 90 days, if an issue concerning a recoupment charge cannot be resolved.

6. PROCEDURES

6.1. The NC recoupment charge to be reimbursed shall be a pro rata recovery of NC for the applicable major defense equipment. Recovery of NC recoupment charges shall cease upon the recovery of total DoD costs. Such charges shall be based on a cost pool as defined in item E1.1.1. of enclosure 1. For a system that includes more than one component, a "building block" approach (i.e., the sum of NC recoupment charges for individual components) shall be used to determine the NC recoupment charge for the sale of the entire system.

6.2. ANC recoupment charge shall not apply when a waiver has been approved by the USD(P) in accordance with enclosure 2 or when sales are financed with U.S. Government funds made available on a non-repayable basis. Approved revised NC recoupment charges shall not be applied retroactively to accepted foreign military sales agreements.

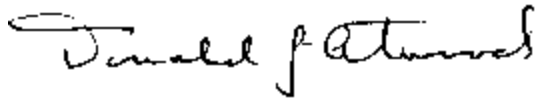
6.3. When major defense equipment are sold at a reduced price due to age or condition, the NC recoupment charge shall be reduced by the same percentage reduction.

6.4. The full amount of "special" research, development, test, and evaluation and nonrecurring production costs incurred for the benefit of particular customers shall be paid by those customers. However, when a subsequent purchaser requests the same specialized features that resulted from the added "special" research, development, test, and evaluation and nonrecurring production costs, a pro rata share of those costs may be paid by the subsequent purchaser and transferred to the original customer if those special nonrecurring cost exceed 50 million dollars. The pro rata share may be a unit charge determined by the DoD Component as a result of distribution of the total costs divided by the total production. Such reimbursements shall not be collected after 10 years have elapsed since acceptance of DD Form 1513, "United States Department of Defense Offer and Acceptance," by the original customer, unless otherwise authorized by the USD(P). The U.S. Government shall not be charged any NCs recoupment charge if it adopts the features for its own use or provides equipment with such features under a U.S. grant aid or similar program.

6.5. For co-production, co-development and cooperative development, or cooperative production DoD agreements, the policy in this Directive shall determine the allocation basis for recouping from the third-party purchasers the investment costs of the participants. Such DoD agreements shall provide for the application of the policies in this Directive to sales to third parties by any of the parties to the agreement and for the distribution of recoupments among the parties to the agreement.

7. EFFECTIVE DATE

This Directive is effective immediately.

A handwritten signature in cursive script, reading "Donald J. Atwood".

Donald J. Atwood
Deputy Secretary of Defense

Enclosures - 2

- E1. Definitions
- E2. Waivers (Including Reductions)

E1. ENCLOSURE 1

DEFINITIONS

E1.1.1. Cost Pool. Represents the total cost to be distributed across the specific number of units. The nonrecurring research, development, test, and evaluation cost pool comprises the costs described in definition E1.1.6., below. The nonrecurring production cost pool comprises costs described in definition E1.1.5., below.

E1.1.2. Foreign Military Sale. A sale by the U.S. Government of defense items or defense services to a foreign government or international organization under authority of Pub. L. No. 90-629 (1968) (reference (b)). Except as waived by the USD(P), foreign military sales are the only sales subject to NC recoupment charges.

E1.1.3. Major Defense Equipment. Any item of significant military equipment on the United States Munitions List having a nonrecurring research, development, test, and evaluation cost of more than 50 million dollars or a total production cost of more than 200 million dollars. The determination of whether an item meets the major defense equipment dollar threshold for research, development, test, and evaluation shall be based on DoD obligations recorded to the date the equipment is offered for sale. Production costs shall include costs incurred by the Department of Defense. Production costs for the foreign military sales program and known direct commercial sales production are excluded.

E1.1.4. Model. A basic alpha-numeric designation in a weapon system series; e.g., a ship hull series, an equipment or system series, an airframe series, or a vehicle series. For example, the F5A and the F5F are different models in the same F-5 system series.

E1.1.5. Nonrecurring Production Costs. Those one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run. Those NCs include DoD expenditures for preproduction engineering; rate and special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing, and evaluation. That includes costs of any engineering change proposals initiated before the date of calculations of the NCs recoupment charge. Nonrecurring production costs do not include DoD expenditures for machine tools, capital equipment, or facilities for which contractor rental payments are made or waived in accordance with the DFARS (reference (d)).

E1.1.6. Nonrecurring Research, Development, Test and Evaluation Costs. Those costs funded by a research, development, test, and evaluation appropriation to develop or improve the product or technology under consideration either through contract or in-house DoD effort. This includes costs of any engineering change proposal started before the date of calculation of the NC recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either procurement or operation and maintenance appropriations.

E1.1.7. Pro Rata Recovery of NCs. Equal distribution (proration) of a pool of NC to a specific number of units that benefit from the investment so that a DoD Component shall collect from a customer a fair (pro rata) share of the investment in the product being sold. The production quantity base used to determine the pro rata calculation of major defense equipment includes total production.

E1.1.8. Significant Change in NC Recoupment Charge. A significant change occurs as follows:

E1.1.8.1. A new calculation shows a change of 30 percent of the current system NC charge.

E1.1.8.2. The NC unit charge increases or decreases by 50,000 dollars or more; or

E1.1.8.3. Where the potential for a 5 million dollars change in recoupment exists. The total collections may be estimated based on the projected sales quantities. When potential collections increase or decrease by 5 million dollars, a significant change occurs.

E1.1.9. "Special" Research, Development, Test, and Evaluation and Nonrecurring Production Costs. Costs incurred under a foreign military sale at the request of, or for the benefit of, a foreign customer to develop a special feature or unique or joint requirement. Those costs must be paid by the customer as they are incurred.

E2. ENCLOSURE 2

WAIVERS (INCLUDING REDUCTIONS)

E2.1.1. Pub. L. No. 90-629 (1968) (reference (b)) requires the recoupment of a proportionate amount of NCs of major defense equipment from foreign military sales customers but authorizes consideration of reductions or waivers for particular sales which, if made, significantly advance U.S. Government interests and the furtherance of mutual defense treaties between the United States and certain countries.

E2.1.2. Requests for waivers should originate with the foreign government and shall provide information on the extent of standardization to be derived as a result of the waiver.

E2.1.3. Blanket waiver requests should not be submitted and shall not be considered. The term "blanket waiver" refers to a NC recoupment charge waiver that is not related to a particular sale; for example, waivers for all sales to a country or all sales of a weapon system.

E2.1.4. A waiver request shall not be considered for a sale that was accepted without a NC recoupment charge waiver, unless the acceptance was conditional on consideration of the waiver request.

E2.1.5. Requests for waivers shall be processed expeditiously, and a decision normally made to either approve or disapprove the request within 60 days after receipt. A waiver in whole or in part of the recoupment charge or a denial of the request shall be provided in writing to the appropriate DoD Component.